IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1104 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI RAMNALAL VIRCHAND

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1104 of 1995

MR RG CHHARA for Appellant No. 1

MR PM VYAS for Appellant No. 1

MS MONA B RAVAL for Appellant No. 1

MR KC SHAH APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

#. The appellant original accused of Sessions Case No. 310 of 1994 has preferred this appeal and challenged the order of conviction and sentence recorded by learned Additional City Sessions Judge, Court No. 17, Ahmedabad dated 31st August, 1995, wherein, the learned trial Judge has convicted the accused for the offence under Section 302 of the IPC and order to suffer RI for life and fine of Rs.500=00 and in default, RI for 3 months.

#. The appeal filed by the appellant accused was notified for admission on 22.3.1996 and while admitting the appeal, the Court had refused the bail, however, expedited the hearing of the appeal and accordingly, the appeal is reached for final hearing before us.

#. Mr. Vyas, learned advocate for the appellant accused has while taking us through the evidence consisting of oral as well as documentary and the judgement under challenge, contended before us that in view of the fact and finding recorded by the learned trial Judge, according to him, he is not in a position to contend before us that the accused deserves clean acquittal in the matter. However, while pressing this appeal, his contention is that in light of the evidence led by the prosecution and more particularly, in light of the medical evidence in respect of the incident, the conviction recorded by the learned trial Judge for the offence under Section 302 of the IPC is not proper and the conviction is required to be altered, as according to him that the case will fall under the exceptions of Section 300 and at the most, the accused can be guilty for the offence under Section 304 Part II of the IPC. In light of the submissions made before us and Mr. Vyas is not in a position to pray for clean acquittal of the accused, we are examining the contentions raised by the counsel appearing for the appellant in respect of the fact that whether the order of conviction and sentence recorded by the learned trial Judge for the offence under Section 302 of the IPC is required to be altered or not and if it is required to be altered, for what offence, the accused can be held responsible.

#. Mr. K.C. Shah, learned Addl. PP has supported the judgement under challenge and according to him, though as per prosecution case, the appellant accused has inflected

one blow with the weapon on the deceased, however, as per medical evidence, such blow on the deceased has resulted into death of the deceased and the learned trial Judge has rightly convicted the accused for the offence of murder. While meeting with the contention of Mr. Vyas that if the Court arises that the accused cannot be held responsible for the offence of murder and in light of the evidence of the witnesses examined by the prosecution, if the conviction is found to be altered, then according to him, the accused can be held responsible for the offence under Section 304 Part I of the IPC and not for the offence under Section 304 Part II of the IPC as contended by Mr. Vyas.

#. In light of the submissions made before us and the fact that the learned trial Judge has rightly accepted the case in respect of the incident, in which, deceased Yunus had died and Mr. Vyas as accordingly, though argued the appeal, he has rightly not urged for clean acquittal of the appellant accused and accordingly, we are considering the evidence in light of the evidence raised by the counsel in brief.

Deceased Yunis @ Yunus hereinafter referred to as the deceased was doing labour work and the incident in question has occurred on the platform No. 2 and 3 at Kalupur Railway Station on 19th June, 1994 in the morning at 6-00 AM and deceased Yunis @ Yunus Maradibhai Ghanchi was murdered with knife by giving dagger blow on the left side of his chest, which has caused death. It is the case of the prosecution that the appellant accused had also assaulted deceased with knife and he has also committed breach of the Notification issued by the Authority and thereby committed offence under Section 135 of the Bombay Police Act.

#. Farooq Mordibhai, PW-1 is examined by the prosecution. He was working as Coolie at railway station at Kalupur Railway Station, Ahmedabad and he was having licence for Coolie. As found from his evidence, on the day of incident i.e. on 19th June, 1994 at 6-00 AM as per routine, he came at platform No. 2-3 at the railway station for search of passenger to earn livelihood as a labourer and he was standing at the tea stall at platform. His brother Yunus and Ishak came to him and told him that they want to go at Valsad and requested him to make sitting arrangement for the travel. At that time, train had not arrived on the platform and all the three brothers were standing and talking. In the meanwhile, one Shri Chandmohmad, who was also doing porter work at the railway station, came there and he

also joined with them and talking at platform. At that time, accused Ramesh, who was licenced coolie, came there. Accused Ramesh asked his brother about what he is doing and his brother told that he was doing labour work. Thereafter, Yunus asked the accused why he was quarreling with his brother Farooq. Thereupon, accused Ramesh got excited and started abusing and used filthy language. Farooq and his brother Yunus told accused not to use such language and accordingly, Ramesh got more excited and Ramesh caught hold of collar of Yunus and take out knife and gave blow on the left hand side of the body of Yunus. Injured Yunus, Ishak, Chandmohmad and Farooq had also ran towards the accused and while running, his brother Yunus fell down on the track between platform No. 1 and 2 and Yunus was found lying there. Thereafter, Yunus was brought on platform No. 1 by all the three persons and took him to Shardaben Hospital. The doctor inquired from him. Thereafter the doctor has called the police persons. Farooq has disclosed about the whole incident, which has taken place on the platform. The Doctor attached to Shardaben Hospital had told him that Yunus required further treatment and accordingly, ambulance was called and the witness Farooq, his brother Ishak and Chandmohmad had brought injured Yunus to V.S. Hospital in ambulance. Yunus was taken into emergency ward for treatment. Yunus was treated by doctor. Doctor has also called the police persons and witness Farooq has disclosed the incident to the police persons. According to Farooq, his brother Yunus was unconscious, when he was taken to Shardaben Hospital and from Shardaben Hospital to V.S. Hospital. PW-1 Farooq has also describe the weapon used in the commission of offence as according to him, the weapon was sharp cutting and was having brass handle and according to the witness, the article No. 4 was the same knife, which the accused had assaulted on his brother. His brother Yunus was declared died. The police has recorded his statement as well as statement of Ishakbhai and Chandmohmad. The inquest panchnama of the dead body of his brother was drawn and he has identified the dead body of his brother. After drawing panchnama, the dead body was sent to the Civil Hospital and he has also informed Shri Parmar, Police Inspector about the incident and he has also shown the place of incident, which was recorded under panchnama.

PW-1 Farooq is the real brother of deceased Yunus and as transpires from his evidence that on the faithful day i.e. on 19th June, 1994, early in the morning at 6-00 AM, he along with his two brothers were waiting for train at platform no. 2-3 as his brothers Yunus and Ishak were to go in a train at Valsad for which he was

required to make sitting arrangement. Chandmohmad was also working as a porter at the railway station and all the 4 persons were talking near the tea stall at the platform and waiting for arrival of the train. The appellant Ramesh is also working as a porter having licence and he arrived at the place where these four persons were standing. According to Farooq, appellant accused Ramesh had inquired from his brother about what he is doing and on getting reply that he is doing labour work, Yunus - injured had asked accused that why he is harassing his brother Farooq and thereupon appellant accused got excited and started abusing. When the accused was told not to abuse, according to Farooq, the appellant accused had got more excited and caught hold of the collar of the deceased Yunus and took out knife and gave one blow on the body of the deceased Yunus and accused had ran away.

As found from the cross-examination of PW-1 Farooq that he is working as coolie for last 4 to 5 years and he knows Chandbhai since about one year. He used to come for labour as porter on platform No. 1 and 2. There are about 616 licenced coolie working at the railway station having no union. The witness has stated that he reside with his brother and his parents. His brother Ishak is working in a garage, which is situated opposite to Maneklal Harilal Mill and said garage is at a distance of 100 meter from his residence. His brother Yunus was not knowing all the coolies, who were not having licence. He had gone to the railway station on the previous night at about 10-00 PM and at that time, he met his brothers and other family members. The other passengers and coolies were also present on the railway station and his brother came at the railway station after 15 minutes or 20 minutes at the railway platform. It is further found from the cross examination that there was no scuffle. According to him that the accused took out knife from the pocket and gave blow. There are total three tracks between platform No. 1 and 2. One Local train was standing at platform No. 1 and one another train was also standing on the platform No. 2 and no body can see from platform No. 1 to platform No. 2 from train through tracks and the accused ran away just after giving blow of knife. His brother Yunus fell down on the middle of the platform and his brother was lifted by them, in which, Chandbhai caught Yunus from the hands, his brother caught Yunus from his legs and witness has caught the injured portion of Yunus. The witness had not lifted the injured and Yunus was taken in rickshaw. No cloths of any person have stained with blood or he could not say whether the blood was found in the rickshaw. He

has not given name of the assailant to doctor at Shardaben Hospital nor he has informed about the incident to his parents. He has denied the suggestion that there were two groups in Coolie of Hindu and Muslim and he has denied the suggestion that it is not correct to say that accused Ramesh has assaulted his brother Yunus.

In light of the evidence of PW-1 Farooq, who is real brother of Yunus, he is working as Coolie at the railway station. Before Yunus and his brother Ishaq came after about 15 to 20 minutes and before that, he has already arrived at the platform and his two brothers have requested him to make sitting arrangement in the train, as they intend to go at Valsad. Appellant Ramesh is also licenced coolie, who also came there and there was some conversation between Ramesh and Yunus and according to PW-1 Farooq that appellant Ramesh had inquired from deceased Yunus that what he is doing and thereafter, Yunus had told appellant accused that why he is quarreling with his brother Farooq and thereafter, he caught hold of the collar of deceased Yunus and started abusing and when all of them had requested the accused not to abuse, the appellant had caught hold of the deceased Yunus and gave blow on the left side of the chest of deceased Yunus and ran away. The presence of PW-1 Farooq at the railway station is but natural and the presence of appellant accused Ramesh is also natural, as both are doing the labour work at railway platform.

#. PW-2 Chandmohmad Imamba has also deposed in the similar way and according to him, that on the day of incident, as a Coolie, he had gone in the morning at about 5-45 AM at the railway station and he also joined Farooq and his brother near platform No. 2 and 3 and they were talking. Chandmohmad is aged about 24 years and he is residing at G.N. Compound, Saraspur. There was heavy crowd at the platform. He was in search of passenger and was standing near platform. He saw Farooq and Yunus were standing at platform. Farooq has inquired that where he was going and the witness has answered that he was going in search of passenger. He was talking with them and in the meantime, the licenced coolie Ramesh came, whom he knows and he was standing there. Deceased Yunus has inquired from Ramesh that what he is doing and the appellant accused has told that he is doing labour work. Thereafter, Yunus had asked accused that why you are quarreling with his brother Farooq, at that time, Ramesh got excited and started abusing by using filthy words. Yunus has told accused not to use such words and therefore, the appellant accused got more excited and accused Ramesh caught hold of collar of Yunus.

Thereafter, witness and all persons went for rescue and in the meantime, Ramesh has took out the knife and gave blow on Yunus on left side and accused Ramesh ran away. Thereafter, witness, Yunus, Farooq and Ishaq also ran towards the accused and accused ran towards local train at platform No. 2. Yunus fall down. Thereafter, all came near Yunus and brought Yunus at platform No. 3 and from there, Yunus was taken to Shardaben Hospital in rickshaw and the preliminary treatment was given by Doctor. The doctor has informed them that Yunus required more treatment and accordingly, doctor asked them to take Yunus to V.S. Hospital and accordingly, they have called ambulance van and witness, Farooq, Ishaq with injured had brought Yunus at V.S. Hospital and Yunus was brought in an emergency ward, where, doctor has informed that Yunus was died. His statement was recorded by the police. He has also identified the muddamal article No. 4 - knife having brass handle as the same weapon, which was used by accused by giving blow on deceased Yunus.

From the evidence of Chandmohmad PW-2, it transpires that he is working as porter at the railway station. He arrived at the platform of railway station early in the morning for search of passenger and there was heavy crowd on the platform. He was standing with other porters at the platform. He saw Farooq, Ishaq and Yunus. It is important to note that according to PW-2 Chandmohmad, it is Yunus, who has inquired from accused Ramesh that what he is doing and it is Ramesh, who has told him that he is doing labour work. Thereafter, it is Yunus, who has asked accused Ramesh that why he is quarreling with his brother Farooq and at that time, accused Ramesh was excited and started abusing and uttered filthy language and when Yunus asked accused not to use such filthy language, the accused got more excited and caught hold of the collar of deceased Yunus and when witness and other brothers of Yunus went for rescue and separated, at that time, accused took out knife and gave blow on the left side of the chest of the deceased and ran away.

As found from the cross-examination of Chandmohmad that he is doing work of labour - porter at railway station since last one year and he is not having any licence for doing such labour work. It is further found that even for doing labour work, he has not purchased any platform ticket. He is also doing work for providing seats in the train. He left his residence in the morning at about 5-30 AM to 5-45 AM. Farooq, Yunus and Ishaq were standing near the tea stall know as "J.G. Stall" situated at platform No. 2 and 3 at a distance of

about 2 to 3 foot and accused Ramesh came after 2 to 3 minutes. He knows Ramesh since last one year as Ramesh was doing labour work and equally, he also knows Farooq since last one year. He knows all the family members of Farooqbhai. According to him that the incident in question has occurred near the tea stall on the platform and there are many persons present near the stall. Yunus has inquired from Ramesh that what he is doing and Ramesh has replied that he is doing labour work. Thereafter, again Yunus has inquired that why he is quarreling with his brother Farooq and therefore, accused Ramesh got excited and caught hold of collar of Yunus and at that time, they went for rescue and all three persons had separated Ramesh and Yunus. According to him, even after the separation, accused Ramesh has also caught hold of collar of Yunus and even thereafter, they have separated the accused and deceased. The witness was posed about the weapon that has been used and the sharpness of the knife. It is further found from the cross-examination, he could not say whether blood come out from the body or not as they ran behind the accused to catch the accused. He could not say that whether the cloths of other persons were blood stained or not. Police persons was also there on platform No. 2 and 3 and Yunus was taken to Shardaben Hospital in a rickshaw from Kalupur. It took about 10 to 15 minutes. He could not say that there are two groups in collie of Hindu and Muslim. He has denied the suggestion that name of the accused is wrongly involved. He has denied the suggestion that at the time of incident, he was not present at the railway station as well as the time of incident, witness, Ishaq and Farooq were also not present. He has denied the suggestion that Farooq and Ishaq are of the same community and to help them, he is deposing falsely.

On close scrutiny of evidence of PW-2 Chandmohmad, he is working as porter at the railway platform. He is not having any licence from the railway authority and further that he knows Farooq PW-1. According to him, witness, Farooq and his two brothers were standing near the tea stall at platform No. 3, at that time accused came. It is Yunus, who had asked the appellant accused that what he is doing and the accused has replied that he is doing labour work. Thereafter, it is Yunus, who has asked accused that why he is quarreling with his brother Farooq and at that time, accused got excited and started abusing and used filthy language. It is Yunus, who has stopped the accused from using such filthy language and therefore, accused got more exited and caught hold of the collar of the deceased Yunus. PW-1 and 2 i.e. Farooq and Chandbhai had also separated

the accused Ramesh and Yunus and it is only thereafter, Ramesh had given one blow on the deceased on the left hand side chest and ran away. It is further found from the evidence of PW-2 Chandbhai that the incident in question has occurred near the J.G. Tea Stall on platform No. 2 and 3, where, there was heavy crowd. Chandbhai also knows accused Ramesh as Chandmohmad is working as porter without licence since last one year. He has denied the suggestion about two groups of Hindu and Muslim in collie at the railway station. According to evidence of PW-1 and PW-2, the accused has abused deceased Yunus by using filthy language and Ramesh has caught hold of deceased Yunus and thereafter, even after separating them by these witnesses, Yunus was assaulted by accused with knife by giving one blow.

#. From the evidence of these two witnesses namely PW-1 Farooq and PW-2 Chandmohmad examined by the prosecution, it clearly show that they were present at the platform No. 2 and 3 at Ahmedabad Railway Station and deceased Yusuf after having been assaulted by the appellant Ramesh was shifted in a rickshaw first at Shardaben Hospital and from there, he was shifted to V.S. Hospital, where doctor has declared him as dead. As observed earlier in the evidence of PW-1 Farooq and PW-2 Chandbhai, when Yunus was taken in rickshaw to Shardaben Hospital, Farooq has not informed the name of assailant to the doctor and further that as per the advise of the Medical Officer attached to Shardaben Hospital, the injured Yunus was shifted for better treatment at V.S. Hospital and accordingly, injured Yunus was shifted from Shardaben Hospital in ambulance van to V.S. Hospital, where Yunus was declared dead. It also transpires from the evidence of Farooq that police has made inquiry and he has narrated the facts about the incident, which has occurred in the morning at platform No. 2 and 3 at Ahmedabad Railway Station on 19th June, 1994.

#. At this juncture, we will refer and discuss the evidence of PW-12 Dr. Jivesh Divyakant, who was at the relevant time working as Medical Officer at Shardaben Hospital and at 6-35 AM on 19th June, 1994. He has examined Yunus. As found from his evidence that when Yunus was brought before him in the hospital, his condition was serious and relative of the patient has informed him that some body has assaulted with knife. The wound was discovered on the left side of injured bosom near the sixth rib bone. The patient was in a condition of shock and his physical condition was critical. He has started giving alstramin. He has deposed that there was an injury on the lungs too and on

first level, the clotted blood was removed. A drainage tube was inserted in the inflicted wound. He has deposed that on seeing the seriousness of the injury, the patient was referred to the V.S. Hospital because all the facilities were available there. The patient has lost almost three liters of blood. The patient was also referred to V.S. Hospital, as there was no cardiac Surgeon available in the hospital. The medical case papers of the patient was prepared by him, which he has brought in the court and these medical case papers are on the record of the case, which are at Ex. 33. He has also issued medical certificate about the injury under his signature on the strength of the medical case papers, which he has proved and the said medical certificate is at Ex. 34. While referring to the weapon used in the commission of offence, on seeing muddamal article No. 4, he has stated that such a sharp weapon can cause such injury and it can possible by such weapon in respect of the injury found on the patient. Looking to the critical condition of the patient, when he has examined the patient, it was not possible for him to say that how long period the patient will survive. The witness has in cross-examination deposed that the patient was referred to V.S. Hospital near about 8-00 O'clock and medical case papers, which he has produced, from which, some of are in his hand writing and others were of junior doctor.

From the evidence of Dr. Jivesh Divyakant, Medical Officer attached to Shardaben Hospital, Yunus was first time brought before him and doctor has examined him at 6-30 AM and condition of the patient was serious. He has started treatment, as referred to earlier and when the patient was brought before him, the relatives of the patient has told him that some body has stabbed Yunus. The medical case papers and medical certificate issued by him were proved by him.

As found from the cross-examination that the patient had remained in the hospital at Shardaben Hospital from 6-30 AM to about 8-00 AM and the patient was referred to V.S. Hospital for better treatment.

##. The medical case paper Ex. 33, which is in the hand written of Dr. Jivesh, it shows that Yunus was aged about 20 years and was admitted in Shardaben Hospital on 19th June, 1994 at 6-35 AM and relatives have informed the doctor and from the medical case paper, it is found that the history was noted down as "alleged H/o stab injury in left side of chest at 6-15 AM" and the condition of the patient was shown breathlessness. Ex. 34 - the medical certificate, which was prepared on the

strength of the medical case papers of the patient. The same was printed form and certificate is dated 29th June, 1994. The patient Yunus was brought on the hospital at 6-35 AM on 19th June, 1994 without police yadi and the certificate which is in the hand writing of doctor reads as under :-

"Alleged H/o. injury on left side of chest at 6-15 AM by opposite party. Stab wound 6th IC space Lt side Mid axillary line."

From the certificate issued by Dr. Jivesh shows that on examination of patient Yunus, Yunus has one injury and the history is shown to be written down that stab injury on the left hand side of the chest at 6-15 AM by opposite party. As per the medical advise of Dr. Jivesh attached to Shardaben Hospital, Yunus was to V.S. Hospital for better treatment.

##. As per the prosecution case that injured Yunus was declared dead by the doctors attached to V.S. Hospital and accordingly, dead body was sent for PM Examination at Civil Hospital. At this juncture, it is necessary for us to discuss the evidence of Dr. Gaurang Kothari examined by the prosecution. Dr. Gaurang Kothari is examined by the prosecution at Ex. 28 as PW-10. Dr. Gaurang Kothari has performed the PM examination on the dead body of Yunus. He deposed that he has received the dead body of Yunus on 19th June, 1994 at 1-00 PM and PM examination was conducted by him as well as by Dr. D.C. Desai between 2.15 PM to 3.13 PM. The injuries which were found are noted down by him in Col. No. 17 of the PM note. A stitched wound was found present on the chest on left side in left mid axillary line 4 clml below nipple level and the same was stab wound. On removing the stitches, it is red in colour and dry clotted blood is present on wound. Size of wound is 2.5 cm. long. The doctor has further deposed and noted down the internal injuries in Col. No. 20 and the stab wound was passing through skin, subcutaneous tissues, intercostal muscles in below 5th rib passes through and through left lung and entered into (heard) left atrium. Wound passes upward and medially. Thoratic cavity contains 1500 cc of blood clots. The PM note was prepared and signed by him as well as by Dr. Desai. According to him that the injuries found on the deceased were sufficient in ordinary course of nature to cause the death and by penetrating and sharp cutting weapon, the said injuries can be caused and by referring to muddamal article No. 4, according to him, these injuries are possible by such weapon. He has proved the PM note of

Yunus, which is at Ex. 29 and according to him, cause of death is due to shock and haemorrahage due to said injury sustained. The age of deceased Yunus, as reflected in the PM note examination shows is 20 year and in cross-examination, Dr. Kothari has deposed that person having aged of 20 years would have 5 lts. of blood in normal case. He has denied that person, who is loosing about 2 to 3 lts. of blood would have been in coma stage. He has also denied the suggestion that a person, who has caused injury if at all he is facing the person, who has received the same cannot be inflicted such injury. Even as per Dr. Kothari only one injury was found, which is reflected in Col.No. 17 of the PM Examination Ex. 29. The doctor has in term, while referring to muddamal article No. 4 has opined that injury, which was found on the dead body was possible by such weapon like knife. So far as medical evidence adduced by the prosecution, suggests that immediately after assault on the injured Yunus at the railway station, he was shifted to Shardaben Hospital, where, Dr. Jivesh has treated the patient Yunus and looking to the serious condition of the patient, he was advised to refer the patient for better treatment at V.S. Hospital. The treatment, which has been provided at Shardaben Hospital is also reflected in the medical case papers of Shardaben Hospital, which is at Ex. 33 and the medical certificate issued by Dr. Jivesh also shows that there is one injury on Yunus, which is at Ex. 34.

##. As observed earlier that when Yunus was taken to Shardaben Hospital, history of assault was disclosed by the relative namely by Farooq and name of the assailant was not disclosed and the history which has been reflected in the medical treatment as well as in the medical case paper is similarly written down by Dr. Jivesh. The incident in question has occurred in the morning at about 6-30 AM and it is the case of the prosecution through evidence of PW-1 Farooq and PW-2 Chandbhai that immediately after giving blow by the accused on the chest of Yunus, the accused ran away and the witnesses ran to apprehend the accused, but as injured Yunus fell down on a track, Yunus was taken in a rickshaw and shifted to Shardaben Hospital. The prosecution has accordingly examined the witnesses to show that appellant accused was apprehended by the police with knife by the Police Head Constable on duty immediately after the assault.

##. Vitthalbhai Chunilal PW-7 was examined by the prosecution. According to him, on 19th June, 1994 he was on duty at Ahmedabad Railway Station as Police Head

Constable and during duty hours on that day, at about 6-00 AM on the platform, there was heavy crowd and he came to know that one person has been assaulted with knife and accordingly, he went at platform No. 2 and 3. At that time, one collie came down from the compartment having a knife on his hand. He has identified the accused in the Court. The accused was apprehended immediately with the weapon after assault and he has handed over and entrusted the accused to Police Constable Shri Ramsing, who was incharge of the Police Station. He has handed over the knife to Ramsing and Ramsing has informed him that person namely Yunus was taken to Shardaben Hospital and he was asked to visit at Shardaben Hospital. He accordingly went to Shardaben Hospital and contacted the RMO and he inquired about the treatment provided to Yunus. The doctor attached to Shardaben Hospital has informed that Yunus has been shifted to V.S. Hospital and accordingly, he came to the Police Station and informed Shri Parmar, P.I. and at that time, a vardhi from V.S. Hospital came, informing that Yunus has died and he along with PI Parmar went to the V.S. Hospital.

From the evidence of PW-7 Vitthalbhai, who was at the relevant time, was on duty at Railway Police Station, as a Head Constable. He has apprehended the appellant accused having knife with him, who came down from the compartment and the accused and muddamal were handed over to Police Constable Shri Ramsing, who was incharge of the police station.

In the cross-examination, it is found that he is in service in the police department since last 27 years and when he came to know about the assault on one person, he went to the platform, where J.G. Tea Stall was at a distance of 50 steps on the side of Maninagar and after he reached at the stall, he has apprehended the accused, who got down from the passenger train at at a distance of 50 to 60 steps from Maninagar side. No panchnama was drawn when he apprehended the accused and entrusted to PSO at the police station. The Police Chowki is situated at platform No. 12 and the police station is on platform No. 1. When he has apprehended the accused Ramesh, he has not seen any blood stain on his cloths. There is a lock up in police chowki and therefore, Ramesh was taken to police chowki in stead of police station. At that time Ramsing was incharge of the police station and he has entrusted the accused to him and he was informed by Ramsing to go at Shardaben Hospital. He went to Shardaben Hospital and doctor at Shardaben Hospital has informed that Yunus was taken to V.S. Hospital at 7-45

AM. He has denied the suggestion that he has not apprehended the accused with weapon and he is deposing falsely. No arrest panchnama of accused is drawn by PW-7 and he has not seen any blood stain on the cloths of the accused.

##. It is necessary for us to refer the evidence of Ramsing Zina Bava, PW-8. He was on duty at the relevant time as Police Head Constable. As found from the evidence that the said police station is situated at the end of platform No. 12. It is further found that on 19th June, 1994 at about 6-00 AM, Police Head Constable Shri Vitthalbhai came with accused Ramesh with knife and Vitthalbhai has informed him that accused was having knife when he found coming out from the compartment and the accused was put in lockup and the knife found from the accused was kept in the cup board and Vitthalbhai had gone to platform No. 2 and 3 for inquiry. P.W. 8 has also identified the accused Ramesh and the weapon article No. 4 in the court. The arrest panchnama of accused was drawn by P.I. Shri Parmar as well as panchnama of knife, which was seized from the accused muddamal article No. 4 was also drawn. No panchnama in respect of handing over the accused Ramesh as well as knife was drawn by the witness PW-8.

In cross-examination, he has deposed that he has not made any panchnama in respect of the knife, which was given by Vitthalbhai along with accused. He has denied the suggestion that Vitthalbhai had not came with accused with knife.

##. Galabhai Ashambhai, PW-14, Police Head Constable, has deposed that he was on duty at Ahmedabad Railway Station from 18th June, 1994 from evening 8 O'clock to morning 8 O'clock on 19th June, 1994. He has received the vardhi from police constable Shri Prahladsinh from Shardaben Hospital and as per the vardhi, at railway station at platform No. 2, a person named Ramesh had assaulted Yunus with knife on the left hand side of chest and said vardhi is noted down by him in the police station diary. The said vardhi is proved, which is at Ex. 38 and after the entry made in the station diary, he has entrusted the investigation to Police Constable Shri Prahladbhai.

In cross-examination, he has admitted that when such vardhi is received on phone, first they are require to note down in a piece of paper. According to him, when he received varthi, he has made entry in the vardhi book itself. The name of the assailant was mentioned as

Rameshbhai, Coolie. He has denied the suggestion that no name of Ramesh Coolie was informed.

##. The investigation of case was conducted by PW-13, Narsinhbhai Mafatlal Parmar, Investigating Officer. He has deposed that at the relevant time, he was working as Police Inspector at Ahmedabad Railway station. On 19th June, 1994 at about 9-20 AM, he came to police station and Police Constable Shri Kiritbhai had informed the vardhi, which he has registered at 9-05 AM and on the strength of the vardhi, Shri Kiritbhai has registered the offence. When said information is given to witness, he immediately proceeded at the hospital. An inquest panchnama was drawn and when he came back at the railway station, where, the accused was kept at police station at platform No. 12, he has prepared the panchnama of physical condition of the accused and arrested the accused. He has also drawn panchnama of scene of offence situated at platform No. 2 and 3 during the noon time. He has recorded the statement of brother of deceased Farooq as well as person, who has witnessed the incident namely Chandmohmad and other witnesses. On the next day, accused was produced before the court and Muddamal articles were sent before the FSL for examination and he has entrusted further investigation to Circle Inspector and thereafter, chargesheet was submitted against the accused.

In the cross-examination, it is found that for the first time, in respect of the incident, he came to know at 9-00 AM on 14th June, 1994 and he could not say that whether he has received such information from Police Constable Vitthalbhai after drawing panchnama of scene of offence. He has not seen any blood stain mark at the scene of offence i.e. at platform No. 2 and 3, near J.G. Tea Stall. However, according to him, due to movement of passenger, such blood stain mark was not found. He has also admitted that he has not made any panchnama at the place near the Tea Stall. He has denied the suggestion that with the help of the relatives of the deceased, the accused was arrested at 11-00 AM by falsely involving in a murder case. The contradiction in statement of Farooq is also brought in the evidence of Shri Parmar.

##. PW-5 Usmangani Noormohammad examined by the prosecution is in respect of the attachment of the cloths of the accused. He has acted as a panch to the said panchnama. He was called on 19th June, 1994 at about 10-30 AM, as panch at platform No. 12 at Ahmedabad Railway Station at Police Chowki. He has identified the

accused in the court, who was present in the court at that time. As found from his evidence that the accused had worn the cloths and the same were blood stained on the left side below the pocket. After removing the cloths, the clothes were sealed and slip was affixed by putting his signature. The witness has identified the shirt, which was seized in his presence, as the same shirt, which was seen to him. He has proved the panchnama Ex. 21 and the said panchnama was signed by him and by other panch.

In cross-examination, it is found that he is driving the rickshaw since last 11 years and he was called by the police to act as a panch and another panchas were also there. He has denied that simply he has signed the slip and he left the police station. Rest of the suggestions are denied by the witness. He has also denied the suggestion that as he is driving the rickshaw, he knows police.

##. The panchnama Ex. 21 is proved, which shows that the shirt of the accused was seized by the police in presence of panchas and there was a blood stain. As per the FSL report, knife muddamal article No. 4 having human blood of "B" group and the shirt of the accused, which was seized was also found human blood having "B" group. As discussed the evidence of prosecution witness, it transpires that immediately after the assault on Yunus on 19th June, 1994 at 6-00 AM, the accused has assaulted Yunus on the left hand side of the chest and the accused run away and PW-7 Vitthalbhai had apprehended the accused with knife immediately and had handed over the accused with knife to Police Head Constable Ramsing, PW-8 at police chowki and the accused was kept in lockup. The blood stain on cloths namely on the shirt was also seized under panchnama and as per the FSL report, the blood, which was found on the shirt was having human blood having "B" group. Muddamal article No. 4 - knife is also seized under panchnama and as per the FSL report, the blood found on the knife was having human blood having "B" group. Only one injury was found on Yunus i.e. on the vital part of the body.

##. So far as involvement of the appellant accused in the crime, is established from the evidence of PW-1 Farooq and evidence of Chandbhai PW-2 and as per their evidence, Yunus was assaulted by accused Ramesh by giving one blow on the right hand side of the chest with knife. As discussed earlier from the evidence of PW-1 Farooq and PW-2 Chandmohmad, their presence is natural at the railway station as both of them are working as coolie at

the railway station. Appellant accused is also working as coolie and his presence is also established by the witness examined by the prosecution and further the accused was apprehended by PW-7 Shri Vitthalbhai with knife and immediately, the accused with knife was entrusted to PSO Shri Ramsing at the police chawki on railway station. As found from the evidence of Chandmohmad that it is the deceased Yunus, had first inquired from the appellant accused that what he is doing and it is only thereafter, Yunus had again asked the appellant that why he is quarreling with his brother Farooq and thereafter the appellant accused got exited and abused the deceased and used filthy language. Thereafter, Yunus had again told appellant not to abuse and not to use such type of language and thereafter, accused has caught hold the collar of the deceased and gave one blow. It is also found from the evidence of both these witnesses that first Farooq was waiting on the platform Nos. 2 and 3 near Tea Stall and thereafter, Yunus and his brothers came, who had to go for Valsad for which, Farooq was require to make sitting arrangement in the train. It is thereafter, Chandbhai PW-2 also came near the Tea Stall and lastly the accused Ramesh had also came there and they were talking. It is therefore clear that accused Ramesh was also waiting for train with other witnesses and Yunus and deceased Yunus was not knowing the accused Ramesh previously. It is only when the accused had replied to Yunus that he is doing labour work, Yunus has asked the accused that why he is quarreling with his brother and in that process, though, there was an attempt by the witnesses to separate them, the accused had gave one blow with knife and run away. With this evidence, it is difficult to believe that accused had a motive to commit murder of deceased Yunus.

##. Mr. Vyas, learned advocate appearing for the appellant accused has vehemently urged that in light of the evidence led by the prosecution, learned trial Judge was not right by giving finding that the accused has determined to commit murder and further, there is nothing to suggest that accused had a motive to commit murder of Yunus and as found from the evidence that deceased Yunus was not knowing the appellant nor the accused Ramesh was knowing deceased Yunus. Even when accused Ramesh had reached near the Tea Stall, when PW-1 and his brothers were standing, the accused Ramesh has not started any quarrel with them and it is only when deceased Yunus had inquired from the accused that what he is doing and appellant accused has replied him that he is doing labour work, the deceased has asked the accused that why he is harassing and quarreling with his brother and in that

situation, the accused had caught hold of the collar of the deceased Yunus and started using filthy language and when witnesses have tried to separate them, the accused gave one blow with knife and run away.

##. Mr. Vyas, learned advocate, in support of his contention, has placed reliance upon certain decisions of the Supreme Court. He has placed reliance on the case between K. Ramakrishnan Unnithan Vs. State of Kerala, reported in AIR 1999 SC p.1428. In para 6 of the said decision, the Supreme Court has in term while considering the provisions of Section 300 of the IPC with regard to intention or knowledge observed as under :-

"para 6 : ..... Thus it is established beyond reasonable doubt that the appellant had given one blow but the blow no doubt was quite severe, as a result of which the intestines had protruded out. It is however crystal clear that the appellant had no animosity against the deceased and he was involved because of the altercations with PW-1. The scenario in which the appellant has been stated by the eye-witnesses to have given one blow on the deceased, it is difficult for us to hold that he gave the blow in question either with the intention of causing murder of the deceased or he can have said to have the requisite knowledge that the death would otherwise be the inevitable result. In such a situation, even on accepting the prosecution case we hold that the accused did not commit the offence under Section 302 but under Part II of Section 304, IPC. We accordingly, set aside the conviction of the appellant under Section 302, IPC and instead, convict him under Section 304, Part II. ...."

Mr. Vyas has also placed reliance on the another decision of the Apex Court in case of STATE OF MADHYA PRADESH VS. GHANSHYAM SINGH, reported in 2003 SCCL.COM 713. In the said case, the the State of Madhya Pradesh has challenged the order of conviction and sentence passed by the High Court praying for enhancement of the sentence imposed by the High Court. The Supreme Court has while considering the provisions of Section 300 of the IPC and on considering the prosecution case and relying upon the other decisions, in para 20 observed as under, which we reproduce hereinbelow :-

"para 20 : Taking into account the all relevant aspects of this case in the background of

> principles governing award of appropriate sentence, we feel that even on a liberal approach, custodial sentence of 6 years would serve the ends of justice. While fixing the sentence we have taken note of the fine imposed which remains unaltered. It is said to have been paid. There was stipulation for 2 year RI in case of default. The respondent, who is on bail, shall surrender to custody to serve balance sentence."

In light of the above decisions of the Apex Court and as found from the medical evidence, though one blow is given on the vital part of the body and in light of the evidence led by the prosecution, which we have discussed hereinabove, we are of the view that the order of conviction of the accused for the offence under Section 302 is not proper and there is some substance on the contentions raised by Mr. Vyas, for which, the conviction of the accused deserves to be altered, keeping in mind the fact that there was no motive to commit murder. Further that it was an accidental meeting on the platform, where, appellant as well as deceased were not knowing each other previously. As found from the evidence of PW-2 Chandmohmad that there was some altercation between deceased Yunus and appellant accused and all of sudden, the accused had gave one blow with knife, which blow was vital and in our view, that the conviction of the accused for the offence under Section 302 of the IPC deserved to be altered by convicting the appellant accused for the offence under Section 304 Part - I of the IPC. The appellant accused was working as a porter at railway station after obtaining licence from the railway authority, the ends of justice will meet by imposing sentence of RI for 10 years and fine imposed by the learned trial Judge deserves to be set aside. Accordingly, while altering the conviction, we pass the following order :-

O R D E R

Appeal is partly allowed. The order of conviction and sentence recorded by the Addl. City Sessions Judge, Court No.17, Ahmedabad on 31.8.1995 in Sessions Case No.310 of 1994 against the appellant accused for the offence under Section 302 of the IPC is hereby altered and the appellant accused is convicted for the offence under Section 304 Part - I of the IPC and appellant accused is ordered to suffer RI for 10 years. Fine imposed by the learned trial Judge is hereby set aside. If the appellant accused has already paid the

fine, the amount of fine is ordered to be refunded to the appellant. Rest of the order passed by the learned trial Judge in respect of disposal of muddamal is hereby confirmed.

(D.K. Trivedi, J.)

(D.P. Buch, J.)
pallav